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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,537	09/21/2001	Steven A. Olsen	14389.1USU1	5282

7590 01/27/2004

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EXAMINER

A, PHI DIEU TRAN

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/960,537

Applicant(s)

OLSEN, STEVEN A.

Examiner

Phi D A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 11,20,23 and 24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10,12-19,21 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-10, 12-19, 21-22 are rejected under 35 U.S.C. 102(b) as being anticipated by Penso (3684056).

Penso (figures 1-4) shows a retractable column having at least two section chains (31) arranged in an adjacent manner, the section chain having a plurality of sections pivotally connected to each other, an at least one chain connection member (45, figure 3) extending in an outward direction from each section wherein the connection members further comprise a surface which slopes toward a point and whereby the chain connection members couple to one another to link each section chain to the adjacent section chain in such manner as to form a rigid column as the section chains are raised in an operably position (figure 4), the connection member being curved (figure 3), the connection member having an elongated shaft and a distal hook portion wherein the surface of the chain connection member that converges toward a point is represented by the distal hook portion, first hook attached to each section of the section chains, the first hook extending in a horizontal manner from each section, a second hook attached to the opposite side of each section from the first hook and in an offset manner whereby each first hook on a section is adjacent to an offset hook on adjacent section, a first chain connection member extending in a substantially outward direction from the section and a second chain connection member extending in a substantially outward direction from the section and wherein a plane running

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through the hook of the second chain connection member being set at an angle to the elongated shaft, the shaft of the connection member having a shoulder wherein the shoulder portion prevents twisting of the shaft in relation to its connection to the section, a guide tower operably positioned relative to the two section chains wherein the guide tower engages the sections and helps to guide the first and second hooks into coupled engagement, at least one guide roller (32) operably connected to the guide tower and operably interacting with the section chains whereby the guide rollers engage the sections and helps to guide the first and second hooks into coupled engagement, at least one shim (34), the shims operably affixed to the guide tower whereby the shims engage the sections (indirectly) and helps to guide the first and second hooks into coupled engagement, at least one interior roller, the interior rollers operably affixed to the guide tower whereby the interior rollers engage the sections and helps to guide the first and second hooks into coupled engagement, a gear rack (figure 1) fixedly connected to each section of the section chain, the gear rack affixed by an extruded T-slot to which fasteners are attached through the gear rack and into the section whereby the gear rack is positioned to engage a drive mechanism and at least one guide roller, at least one key is inserted into an at least one slot thereby affixing the gear rack to the section of the section chain, the drive mechanism (104) is operably attached to guide tower and operably interacts with the section chains whereby actuation of the mechanism raises the section chains into position so that the first and second hooks engage to form the column, a kicker operably attached to the crossbar of each section of the section chain whereby when the section is taken up by the take up mechanism, the kicker shunts the section into a properly seated position relative to the section underneath it on the take up mechanism (figures 1, 4).

Response to Arguments

1. Applicant's arguments filed 10/20/03 to claims 1-10, 12-19, 21-22 have been fully considered but they are not persuasive.

Applicant states that the "section chain" and "chain connection member" in Penso reference are not equivalent structures to applicant's "section chain" and "chain connection member", examiner respectfully disagrees. Penso reference shows all of the claimed structures relating to "section chain" and "chain connection member", Penso thus teaches applicant's claimed structures. In response to applicant's argument that Penso teaches lifting a scaffolding unit, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). The argument is thus moot.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Phi Dieu Tran A *PA*
January 23, 2004

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

Lanna Mai